

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.503 of 2006**

Hazi Abdul Rahim Khan, Aged about 72 years, S/o. Late Hazi Mohammed Masood Khan, R/o. Juni Line, Bilaspur, District Bilaspur (CG)

---- Appellant/Plaintiff

Versus

1. Mohammed Karim, Aged 50 years, S/o. Late Mohammed Yusuf, R/o. Tatyapara, Raipur, District Raipur (Chhattisgarh)
2. Begum, Aged at present 58 years, Wd/o. Mohammed Ibrahim,
3. Faruque, Aged at present 22 years, S/o. Late Mohammed Ibrahim,
Respondent No.2 & 3 R/o. Badi Masjid, Dhamtari, District Raipur (Chhattisgarh)
4. Abdul Khanam, S/o. Mohammed Ibrahim, Aged at present 42 years, R/o. House No.62, Nehru Nagar, Raipur, Tahsil & District Raipur (CG)

---- Respondent/Defendants

For Appellant/Plaintiff	:	Mr.Manoj Paranjape, Advocate
For Res.No.1/Defendant No.4:	:	Mr.Y.C.Sharma, Advocate
For Respondents No.2 to 4	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

20.09.2019

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiff is as under:-

“Whether the first appellate Court was justified in setting aside the decree passed by the trial Court under Section 12(1)(a) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter “the Act”) against defendant No.4 / licensee, by ignoring the mandate contained in Section 23 of the Act ?

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The plaintiff/appellant herein filed a suit for eviction and for recovery of arrears of rent on the ground enumerated under Section 12 (1) (a) and 12 (1) (e) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as “the Act of 1961”) pleading inter-alia that the suit accommodation is let-out to Mohammad Ibrahim Khan, husband of defendant No.1 and father of defendants No.2 and 3 as tenant on a monthly rent of ₹ 20/- for residential purpose. It was further pleaded that original defendant/tenant did not pay rent from June, 1975 to February, 1977 and the suit accommodation is required bona fide by the plaintiff for residential purpose as he has no reasonably suitable alternative accommodation of his own in the township of Raipur, therefore, he is entitled for decree under Section 12(1)(a) and 12 (1)(e) of the Act of 1961.
3. Defendant No.1 to 3 filed their written statement and admitted the relationship of landlord and tenant, but pleaded that they have no relation with the suit accommodation as original defendant has already vacated from the suit premises and at present, defendant No.4 is residing in the suit premises.
4. Defendant No.4 filed his separate written statement stating inter-alia that he is in possession of the suit accommodation for last 20 years and has perfected his title by way of adverse possession and as such, the plaintiff is not entitled for decree of eviction.
5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 28.7.98, decreed the suit only under Section 12 (1) (a) of the Act of 1961 holding that original defendant Mohammad Ibrahim Khan was tenant

of the plaintiff and defendant No.4 is licensee of the original defendant and the plaintiff has failed to prove the ground under Section 12(1)(e) of the Act of 1951. On appeal being preferred by defendant No.4, the first appellate Court set aside the judgment and decree of the trial Court on the ground that defendant No.4 is licensee of the original tenant and therefore, no decree under Section 12(1)(a) of the Act of 1961 can be passed against him. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.

6. Mr.Manoj Paranjape, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in setting aside the judgment and decree of the trial Court ignoring the provisions contained in Section 23 of the Act of 1961 by which decree of eviction is binding on all persons who may be in occupation of the accommodation and the plaintiff is entitled for vacant possession by evicting defendant No.4 therefrom, as such, the judgment and decree of the first appellate Court deserves to be set aside and that of the trial Court be restored.
7. On the other hand, Mr.Y.C.Sharma, learned counsel for respondent No.1/defendant No.4, would support the impugned judgment and decree and submit that the first appellate Court is justified in setting aside the judgment and decree of the trial Court by dismissing the suit.
8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records

with utmost circumspection.

9. The trial Court has held that the plaintiff is the landlord and the original defendant is the tenant of suit accommodation and further held that defendant No.4 is licensee of original defendant and the plaintiff is entitled for decree only under Section 12(1)(a) of the Act of 1961 though defendant No.4 is licensee of original defendant-Mohammad Ibrahim Khan, which the first appellate Court has interfered with at the instance of defendant No.4 on the ground that against licensee no decree can be passed under Section 12(1)(a) of the Act of 1961.
10. At this stage, it would be appropriate to notice Section 23 of the Act of 1961 which states as under:-

“23. Vacant possession to landlord.-Notwithstanding anything contained in any other law, where the interest of a tenant in any accommodation is determined for any reason whatsoever and any decree or order is passed by a Court under this Act for the recovery of possession of such accommodation, the decree or order shall, subject to the provisions of section 16, be binding on all persons who may be in occupation of the accommodation and vacant possession thereof, shall be given to the landlord by evicting all such persons therefrom:

Provided that nothing in this section shall apply to any person who has an independent title to such accommodation.”

A careful perusal of the aforesaid provision would show that a decree or order for eviction of a tenant from the suit accommodation will be binding on all persons who may be in occupation of the said accommodation and vacant possession of the accommodation shall be given to the landlord by evicting all such persons therefrom. This provision supersedes every other provision of law for the time being in force. However, this provision itself provides for two exceptions.

One is with regard to the provisions contained in Section 16 of the Act of 1961 which provides for sub-tenant, whose sub-tenancy was created lawfully and who had given notice of such creation to the landlord in accordance with law the provisions of Section 15 of the Act of 1961. Likewise, second exception is made by the proviso thereof, which provides that a person who has an independent title to such accommodation shall not be bound by such decree and he shall not be bound to vacate the said accommodation, if he is in possession thereof.

11. The Madhya Pradesh High Court in the matter of Kamal Kishore Verma v. Murlidhar Rathi¹ when the the plaintiff/deeree-holder therein proceeded to obtain possession of suit accommodation pursuant to decree passed in his favour, the objectors claimed that they were in occupation of particular parts of suit accommodation as sub-tenants with the previous permission in writing of plaintiff/deeree-holder and as such, they were not liable to be evicted, has held that the objector having failed to prima-facie satisfy that he has acquired the status of sub-tenants under the provisions of Section 16 of the Act, as such, objector was liable to be evicted from the part of suit accommodation in possession by virtue of Section 23 of the Act of 1961.

12. The proviso contained in Section 23 of the Act of 1961 was considered by the High Court of Madhya Pradesh in the matter of Bhikobai Kanhaiyalal and others v. Dhannalal Chintaman and others², in which it was held as under:-

¹ 1989-I MPWN 5

² 1975 MPLJ 616

“13. It is also clear that the proviso under section 23 of the Act was only intended to protect the possession of persons who had entered into possession by virtue of some right independent of the judgment-debtor so that their right to possession being independent of the judgment-debtor has to be protected. The case of a trespasser could never be intended to be covered by the proviso. This argument is also, therefore, devoid of any merit and is rejected.”

- 13.** Reverting to the facts of the present case in light of principle of law laid down by the Madhya Pradesh High Court in Kamal Kishore Verma (supra) and Bhikobai Kanhaiyalal (supra), it would appear that both the Courts below have held that defendant No.4 is only licensee of the original defendant. It is not the case of defendant No.4 that he was sub-tenant duly created under Section 16 of the Act of 1961 after complying with the provisions contained in Section 15 of the Act of 1961. Both the Courts below have also held that he was not having any independent title in the said suit accommodation, he is only licensee of the original defendant and in the considered opinion of this Court he is bound by decree of eviction in view of Section 23 of the Act of 1961 and liable to be evicted from the suit accommodation.
- 14.** In view of the above-stated legal analysis, the first appellate Court is absolutely unjustified in setting aside the judgment and decree of the trial Court. Defendant No.4, who is held to be licensee of the original defendant, is bound by decree of eviction by virtue of Section 23 of the Act of 1961. Accordingly, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is hereby restored.
- 15.** The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

16. A decree be drawn-up accordingly.

17. At this stage, at the request of Mr.Y.C.Shrma, learned counsel for respondent No.1/defendant No.4, 3 months' time upto 31st December, 2019 is granted to vacate the suit accommodation subject to following conditions:

(i) Respondent No.1/defendant No.4 shall submit an usual written undertaking before the trial Court within 3 weeks from today that he shall vacate the suit accommodation on or before 31st December, 2019 by delivering peaceful possession to the plaintiff and will not create any right or interest over the suit accommodation in the meanwhile.

(ii) Respondent No.1/defendant No.4 shall deposit the arrears of rent and to pay regular rent in the shape of damages with effect from 1st October, 2019 along with arrears of rent till the actual date of delivery of possession of the suit accommodation before the trial Court to the plaintiff towards damages for occupation and use of the suit accommodation by him.

If the aforesaid conditions are not complied with, the decree granted in favour of the plaintiff, shall be executable forthwith in accordance with law.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-